

TITLE 41
UNIFORM COMMERCIAL CODE

CHAPTER 41-01
GENERAL PROVISIONS

41-01-01. (1-101) Short title. This title shall be known and may be cited as the Uniform Commercial Code.

41-01-02. (1-102) Purposes - Rules of construction - Variation by agreement.

1. This title shall be liberally construed and applied to promote its underlying purposes and policies.
2. Underlying purposes and policies of this title are:
 - a. To simplify, clarify, and modernize the law governing commercial transactions.
 - b. To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties.
 - c. To make uniform the law among the various jurisdictions.
3. The effect of provisions of this title may be varied by agreement, except as otherwise provided in this title and except that the obligations of good faith, diligence, reasonableness, and care prescribed by this title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.
4. The presence in certain provisions of this title of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection 3.
5. In this title, unless the context otherwise requires:
 - a. Words in the singular number include the plural, and in the plural include the singular.
 - b. Words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

41-01-03. (1-103) Supplementary general principles of law applicable. Unless displaced by the particular provisions of this title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

41-01-04. (1-104) Construction against implicit repeal. This title being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

41-01-05. (1-105) Territorial application of the title - Parties' power to choose applicable law.

1. Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights

and duties. Failing such agreement, this title applies to transactions bearing an appropriate relation to this state.

2. Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law, including the conflict of laws rules, so specified:
 - a. Rights of creditors against sold goods. Section 41-02-47.
 - b. Applicability of the chapter on leases. Sections 41-02.1-05 and 41-02.1-06.
 - c. Applicability of the chapter on bank deposits and collections. Section 41-04-02.
 - d. Governing law in the chapter on funds transfers. Section 41-04.1-38.
 - e. Letters of credit. Section 41-05-16.
 - f. Applicability of the chapter on investment securities. Section 41-08-10.
 - g. Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 41-09-21 through 41-09-27.

41-01-06. (1-106) Remedies to be liberally administered.

1. The remedies provided by this title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this title or by other rule of law.
2. Any right or obligation declared by this title is enforceable by action unless the provision declaring it specifies a different and limited effect.

41-01-07. (1-107) Waiver or renunciation of claim or right after breach. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

41-01-08. (1-108) Severability. If any provision or clause of this title or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application, and to this end the provisions of this title are declared to be severable.

41-01-09. (1-109) Section captions. Section captions are parts of this title.

41-01-10. (10-101) Effective date - Transition. This title shall become effective on July 1, 1966. It applies to transactions entered into and occurring after that date. Transactions validly entered into before such effective date and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this Act as though such repeal or amendment had not occurred.

41-01-10.1. (11-102) Preservation of existing transition provisions. The provisions of section 41-01-10 shall continue to apply to chapter 343 of the 1973 Session Laws as codified in this title, and for this purpose title 41 as enacted and as amended shall be considered one continuous statute.

41-01-10.2. (11-103) General rule of transition. Transactions validly entered into after the effective date of this title and before January 1, 1974, and the rights, duties, and interests flowing from those transactions remain valid after January 1, 1974, and may be terminated,

completed, consummated, or enforced as required or permitted by this title as amended by chapter 343 of the 1973 Session Laws. Security interests arising out of those transactions which are perfected on January 1, 1974, remain perfected until they lapse as provided in chapter 343 of the 1973 Session Laws, as codified in this title, and may be continued as permitted by that chapter, except as stated in section 41-01-10.5.

41-01-10.3. (11-104) Transition on change of filing requirement. A security interest for the perfection of which filing or the taking of possession was required under title 41 and which attached prior to January 1, 1974, but was not perfected, is deemed perfected on January 1, 1974, if chapter 343 of the 1973 Session Laws, as codified in this title, permits perfection without filing or authorizes filing in an office where any prior ineffective filing was made.

41-01-10.4. (11-105) Transition on change of place of filing.

1. A previously filed financing statement or continuation statement which shall not have lapsed prior to January 1, 1974, remains effective for the period previously provided for in this title, but not less than five years after the filing.
2. With respect to any collateral acquired by the debtor after January 1, 1974, any effective financing statement or continuation statement described in this section applies only to the extent that filing is in an office appropriate to perfect security interests in the newly acquired collateral under chapter 343 of the 1973 Session Laws, as codified in this title.
3. The effectiveness of a financing statement or continuation statement filed prior to January 1, 1974, may be continued by a continuation statement as permitted by chapter 343 of the 1973 Session Laws, as codified in this title, except that if that chapter requires a filing in an office where there was no previously filed financing statement, a new financing statement conforming to section 41-01-10.5 shall be filed in that office.

41-01-10.5. Required refilings.

1. If a security interest, without filing or recording, is perfected or has priority on January 1, 1974, as to all persons or as to certain persons and the filing or recording of a financing statement would be required for the perfection or priority of the security interest against those persons, the perfection and priority rights of the security interest continue until three years after January 1, 1974, at which time the perfection will lapse unless a financing statement is filed or recorded as provided for in subsection 4 or the security interest is otherwise perfected.
2. If a security interest is perfected on January 1, 1974, under a law other than this title which requires no further filing, refiling, or recording in order to continue its perfection, perfection continues until three years after January 1, 1974, at which time the perfection will lapse, unless a financing statement is filed as provided for in subsection 4, the security interest is otherwise perfected, or under subsection 1 of section 41-09-31 the other law continues to govern filing.
3. If a security interest is perfected by a filing, refiling, or recording under any statute or other law repealed or modified by chapter 343 of the 1973 Session Laws, as codified in this title, which required further filing, refiling, or recording in order to continue its perfection, perfection continues and will lapse on the date provided for by the law so repealed for such further filing, refiling, or recording, unless a financing statement is filed as provided for in subsection 4 or the security interest is otherwise perfected.
4. A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. It must identify the security agreement, statement, or notice however denominated in any statute or other law repealed or modified by chapter 343 of the 1973 Session Laws, as codified in this title, state the

office where and the date when the last filing, refiling, or recording, if any, was made with respect to it, and the filing number, if any, or book and page, if any, of any recording and further state that the security agreement, statement, or notice, however denominated, in another filing office under this title or under any statute or other law repealed or modified by chapter 343 of the 1973 Session Laws, as codified in this title, is still effective. Sections 41-09-21 and 41-09-72 govern the proper place to file the financing statement. Except as specified in this subsection, the provisions of subsections 4 and 5 of section 41-09-86 for continuation statements apply to the financing statement.

41-01-10.6. (11-107) Transition as to priorities. Except as otherwise provided for in sections 41-01-10.2, 41-01-10.3, 41-01-10.4, and 41-01-10.5, the provisions of this title which fixed priority positions of the parties prior to January 1, 1974, continue to govern them. In other cases, questions of priority are governed by this title as amended by chapter 343 of the 1973 Session Laws.

41-01-10.7. (11-108) Presumption that rule of law continues unchanged. Unless a change in the law has clearly been made, chapter 343 of the 1973 Session Laws is deemed declaratory of the meaning of this title prior to January 1, 1974.

41-01-11. (1-201) General definitions. Subject to additional definitions contained in the subsequent chapters of this title which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this title:

1. "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.
2. "Aggrieved party" means a party entitled to resort to a remedy.
3. "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this title (sections 41-01-15, 41-02-15, and 41-02.1-16). Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts (section 41-01-03). (Compare "Contract".)
4. "Bank" means any person engaged in the business of banking.
5. "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of an instrument, a negotiable tangible document of title, or a certificated security payable to bearer or endorsed in blank.
6. "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.
7. "Branch" includes a separately incorporated foreign branch of a bank.
8. "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.
9. "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in the ordinary

course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 41-02 may be a buyer in the ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in the ordinary course of business.

10. "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:
 - a. A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
 - b. Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.
11. "Contract" means the total legal obligation which results from the parties' agreement as affected by this title and any other applicable rules of law. (Compare "Agreement".)
12. "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.
13. "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.
14. "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to instruments, tangible documents of title, chattel paper, or certificated securities means voluntary transfer of possession.
15. "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.
16. "Fault" means wrongful act, omission, or breach.
17. "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this title to the extent that under a particular agreement or document unlike units are treated as equivalents.
18. "Genuine" means free of forgery or counterfeiting.

19. "Good faith" means honesty in fact in the conduct or transaction concerned.
20. "Holder" means:
 - a. The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;
 - b. The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or
 - c. The person in control of a negotiable electronic document of title.
21. To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.
22. "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.
23. A person is "insolvent" who either has ceased to pay the person's debts in the ordinary course of business or cannot pay the person's debts as they become due or is insolvent within the meaning of the federal bankruptcy law.
24. "Money" means a medium of exchange authorized or adopted by a domestic or foreign government or by an intergovernmental organization.
25. Subject to subsection 27, a person has "notice" of a fact if:
 - a. The person has actual knowledge of it;
 - b. The person has received a notice or notification of it; or
 - c. From all the facts and circumstances known to the person at the time in question the person has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.

26. A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it. Subject to subsection 27, a person "receives" a notice or notification when:
 - a. It comes to that person's attention; or
 - b. It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.
27. Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event, from the time when it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information

unless such communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

28. "Organization" includes a corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.
29. "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this title.
30. "Person" includes an individual or an organization (see section 41-01-02).
31. "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.
32. "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.
33. "Purchaser" means a person who takes by purchase.
34. "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.
35. "Representative" includes an agent, an officer of a corporation or association, a manager of a limited liability company, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.
36. "Rights" includes remedies.
37. a. "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 41-09. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 41-02-46 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 41-09. Except as otherwise provided in section 41-02-53, the right of a seller or lessor of goods under chapter 41-02 or 41-02.1 to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with chapter 41-09. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer, section 41-02-46, is limited in effect to a reservation of a "security interest". Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:
 - (1) The original term of the lease is equal to or greater than the remaining economic life of the goods;
 - (2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

- (3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or
 - (4) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.
 - b. A transaction does not create a security interest merely because it provides that:
 - (1) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
 - (2) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, reporting, or registration fees, or service or maintenance costs with respect to the goods;
 - (3) The lessee has an option to renew the lease or to become the owner of the goods;
 - (4) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
 - (5) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.
 - c. For purposes of this subsection: Additional consideration is not nominal if when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into. "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.
38. "Send" in connection with a writing, record, or notice means:
- a. To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

- b. In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.
- 39. "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.
- 40. "Surety" includes guarantor.
- 41. "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.
- 42. "Term" means that portion of an agreement which relates to a particular matter.
- 43. "Unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery.
- 44. "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (sections 41-03-29, 41-04-22, and 41-04-23), a person gives "value" for rights if the person acquires them:
 - a. In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection;
 - b. As security for or in total or partial satisfaction of a preexisting claim;
 - c. By accepting delivery pursuant to a preexisting contract for purchase; or
 - d. Generally, in return for any consideration sufficient to support a simple contract.
- 45. "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.
- 46. "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

41-01-12. (1-202) Prima facie evidence by third-party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

41-01-13. (1-203) Obligation of good faith. Every contract or duty within this title imposes an obligation of good faith in its performance or enforcement.

41-01-14. (1-204) Time - Reasonable time - Seasonably defined.

- 1. Whenever this title requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.
- 2. What is a reasonable time for taking any action depends on the nature, purpose, and circumstances of such action.
- 3. An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

41-01-15. (1-205) Course of dealing and usage of trade.

1. A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.
2. A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing, the interpretation of the writing is for the court.
3. A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.
4. The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.
5. An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.
6. Evidence of a relevant usage of trade offered by one party is not admissible unless and until that party has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

41-01-16. (1-206) Statute of frauds for kinds of personal property not otherwise covered.

1. Except in the cases described in subsection 2, a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by that party's authorized agent.
2. Subsection 1 does not apply to contracts for the sale of goods (section 41-02-08) nor of securities (section 41-08-13) nor to security agreements (section 41-09-13).

41-01-17. (1-207) Performance or acceptance under reservation of rights.

1. A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest", or the like are sufficient.
2. Subsection 1 does not apply to an accord and satisfaction governed by section 41-03-37.

41-01-18. (1-208) Option to accelerate at will. A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that the party shall have power to do so only if the party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

41-01-19. (1-209) Subordinated obligations. An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may

subordinate that creditor's right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.